

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF MUSKEGON HEIGHTS

-and-

MERC ACT 312 CASE NO. L09 J-7002

MICHIGAN FRATERNAL ORDER OF
POLICE LABOR COUNCIL

ACT 312 OPINION AND AWARD

APPEARANCES:

ADVOCATES: JOHN PATRICK WHITE, ATTORNEY
MICHAEL F. WARD, ATTORNEY

PANEL MEMBERS: JOHN PATRICK WHITE, ATTORNEY
MICHAEL F. WARD, ATTORNEY

PETITION DATED: FEBRUARY 18, 2010

CASE HEARD: MAY 13, 2011

AWARD DATE: AUGUST 25, 2011

AWARD

COMPENSATION: THE UNION LAST BEST OFFER IS ADOPTED.

WORKERS COMPENSATION PLAN: THE UNION LAST BEST OFFER IS ADOPTED.

PROOF OF ILLNESS: THE UNION LAST BEST OFFER IS ADOPTED.

HOSPITALIZATION INSURANCE:

Section 23.1A: THE UNION LAST BEST OFFER IS ADOPTED.

Section 23.1B: THE CITY LAST BEST OFFER IS ADOPTED.

Section 23.1C: THE CITY LAST BEST OFFER IS ADOPTED.

Section 23.2: THE CITY LAST BEST OFFER IS ADOPTED.

PART TIME OFFICERS: THE UNION LAST BEST OFFER IS ADOPTED WITH THE
NOTED PROVISIO.

PROMOTIONAL PROCEDURE: THE CITY LAST BEST OFFER IS ADOPTED.

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INTRODUCTION

Background

The City of Muskegon Heights filed a Petition for Act 312 Arbitration on February 18, 2010 in regard to its Road Patrol Unit. The Petition enumerated seven economic and three non-economic issues in dispute. At the time the Petition was filed, 14 employees were listed as in the Bargaining Unit. The Collective Bargaining Agreement for the Police Patrol Unit expired on December 31, 2008.

Section 9 of Act 312 at the time of the filing of the Petition herein specified the following factors as those applicable to the findings, opinion and order of the Act 312 Arbitration Panel:

- “(a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable

communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.”

The Act has recently been amended so that the Arbitration Panel is to give priority to “the financial ability of the unit of government to pay.”

Ability to Pay

The Employer in this case has raised ability to pay as an important consideration. In that connection, it is argued that in the event ability to pay is ignored, the City faces “the potential loss of local democratic control” by virtue of an Emergency Financial Manager being appointed.

Peter Haefner, CPA, assisted in the preparation of the 2009 Audit for the City of Muskegon Heights. Mr. Haefner noted the Police Department is funded from the General Fund and that Fund declined by \$100,000 from 2008 to 2009. The City is operating under a Deficit Reduction Plan, however, it failed to meet the requirements of the Plan in 2009. The General Fund deficit for 2009 amounted to \$570,000. The Witness stated the Fund Balance should amount to about 15% of expenditures. Muskegon Heights should have a Fund Balance in the vicinity of \$1 million. For the year ending December 31, 2009, expenditures exceeded revenue

by \$178,767. The problem arises from the fact that the City has experienced a decline in State Shared Revenue – \$100,000 from 2006 to 2009. The City population has declined so State Shared Revenue will likely decline further. The decline in population has adversely affected income tax revenue – a decline of approximately \$250,000 from 2006 to 2009. Another factor affecting the City is declining property values. Other City funds are also in a deficit position so the total City deficit amounted to some \$1.3 million in 2009.

Natasha Henderson, Muskegon Heights City Manager since August 2008, testified the City has been unable to operate with a balanced budget as required by State law. The Witness identified several employers located in the City who have closed facilities in recent years. She noted that several measures have been taken to reduce City expenditures. In Fiscal Year 2008-2009 the City laid off 15 full-time employees and six part-time workers. The non-union and Fire Bargaining Unit accepted a change in health insurance – PPO3. In Fiscal Year 2009-2010, 12 full-time employees were laid off and the Clerical and DPW Units moved to the PPO3 Plan. Employees have not received a pay raise since 2007. The Witness also experienced reductions in her level of pay and benefits – no pay increase even though her contract provided for a 2% per year increase; she moved to a PPO3 Plan, etc. With reference to the Police Bargaining Unit, Ms. Henderson noted that in 2008 staff reductions amounted to six full-time and five part-time positions so further reductions would endanger citizen safety. She further noted this Unit has not moved to a PPO3 Plan resulting in greater cost to the City.

Lori Doody, City Finance Director, explained that General Fund expenditures include repair of aging vehicles – the City cannot afford to purchase new vehicles – liability insurance, etc. In 2004, the City obtained a \$1.4 million deficit elimination bond and about four years of

payment remain on it. The City has made no effort toward increasing taxes.

Issues In Dispute

Compensation Plan

The current level of pay for a Police Officer with 36 months of service amounts to \$43,900.07.

Employer Proposal:

“Section 29.1 – Position Compensation Plan

Effective July 1, 2011 – 5% pay decrease across the board

Effective January 1, 2012 – 0% pay increase across the board

Effective January 1, 2013 – 0% pay increase across the board

Add to end of Section: ‘Should the City not be able to meet its deficit reduction goals under the State mandated plan for Fiscal Year 2011, 2012 or 2013, the City may seek proposals to provide police services on a contracted basis. Prior to contracting the services, the bargaining unit will be offered an opportunity to provide cost savings to equal the savings to be realized by the contracting of the police services’.”

Union Proposal:

“Attached hereto are the Wage Schedules that reflect the following salary increases.

Effective January 1, 2009 – 0% pay increase across the board.

Effective January 1, 2010 – 0% pay increase across the board.

Effective January 1, 2011 – 0% pay increase across the board.

Effective January 1, 2012 – 0% pay increase across the board.

Effective January 1, 2013 – 0% pay increase across the board.

The attached wage scale would be:

City of Muskegon Heights Police Patrol Unit
 Pay Schedule for 1/1/09 thru 12/31/13
 Detective Pay @ 2% Over Patrol

	Start	6 Months	12 Months	18 Months	24 Months	30 Months	36 Months
ANNUAL	\$36,063.37	\$37,670.22	\$38,702.06	\$39,733.86	\$40,765.73	\$41,797.58	\$43,900.07
HOURLY	\$17,3382	\$18.1107	\$18.6068	\$19.1028	\$19.5989	\$20.0950	\$21.1058

*The City states the above Schedule is inaccurate because it reflects the current deputies' wages which are 2% over a Patrol Officers' wages.

The primary rationale for the City Proposal of a 5% pay decrease effective July 1, 2011 relates to the members of this Bargaining Unit continuing to have PPO-1 health insurance while all other City employees have PPO-3 coverage. Ms. Henderson said the 5% reduction would save the City \$21,000 based on the regular wages of a Police Officer. With reference to the proposed language addition, Ms. Henderson characterized it as a cost containment measure which would allow the City to provide police protection without resort to an Emergency Financial Manager. On cross-examination, Ms. Henderson conceded the City had not proposed a 5% reduction prior to March 2011. Ms. Henderson estimated the savings to the City if the Police Officers had gone to a PPO-3 as \$48,463. The Witness also agreed no other City bargaining unit has a provision whereby it would lay off the entire unit and then subcontract the work.

Insofar as external comparables are concerned, the following table provides the relevant data:

"CURRENT WAGES

Comparable:	Officer Wage per year (1)	Ranking
Big Rapids	\$48,195.00	4
Cadillac	\$46,890.00	6

Grandville	\$54,086.00	2
Niles	\$50,625.83	3
St. Joseph	\$54,092.50	1
Sturgis	\$48,193.60	5
Average	\$50,347.15	
Muskegon Heights	\$43,900.07	7

(1) Officer after 36 months service; wage as of 2010 if known”

The Labor Council called David Bukala, Labor Representative, who noted the Union had proposed a one and one-half percent increase in 2009, 2010 and 2011. For the date of July 1, 2008, the comparable top paid Patrol Officers had an average pay of \$49,429.00 as compared with \$43,900 for Muskegon Heights. The Witness noted the difference amounted to \$5,519, or 11.1%.

Marvin Petty, a Police Officer for 11 years in the City of Muskegon Heights, acknowledged the City had financial difficulties, but he also noted the work demand for City Officers has increased. He also related the City proposed 5% wage reduction “would affect me a whole lot.” The Witness intimated that a reduction in pay might cause him to move into the City and that caused him concern for his family’s safety.

Lynne Gill, Muskegon Heights Chief of Police, has 21 years of service in the City. Chief Gill said he has raised his family in the City and has had no safety related problem residing in the City.

It can hardly be denied the City of Muskegon Heights is in financial difficulty. The City has noted that recently passed legislation, which gives ability to pay primacy, has immediate effect upon being signed. I am not persuaded the cited legislation is applicable to this case. The

factors outlined in the new legislation relative to ability to pay were not specifically addressed at the Hearing since it was not yet in effect.

The City demand for a 5% pay decrease effective July 1, 2011 is primarily based on the fact that this bargaining unit continued to have a PPO-1 health plan. No other bargaining unit has sustained a 5% decrease in wages. It also is unclear whether the 5% decrease will continue to be applicable on January 1, 2011 – *i.e.*, will the 5% be restored with a 0% increase or will it remain in effect with a 0% increase? The comparables do not support a wage reduction since the pay level for the Muskegon Heights Patrol Officers is substantially lower than every comparable community. In contrast to no pay increase since January 1, 2008, the Patrol Officers have been required to respond to an increasing number of calls for service. It also needs to be noted the Police Department since the 2008/2009 Fiscal year has undergone a significant reduction in personnel. The Panel rejects the City Proposal for a 5% wage reduction and it is denied.

The City also proposes language allowing it to subcontract police services in the event it does not meet its deficit reduction goal. No other City bargaining unit has a similar provision. New legislation which provides for the appointment of an Emergency Financial Manager will allow implementation of cost-cutting steps without regard to provisions in a Collective Bargaining Agreement in the event that need arises. The Panel is not persuaded that the City needs the proposed language.

Worker's Compensation

The City Proposal is to add the following sentence to the last paragraph in Section 21.8:

“Worker’s compensation benefits will be disallowed if the injury is found to be the result of improper actions by the officer, including horseplay.”

The last paragraph of Section 21.8 provides:

“Benefits for this section may be limited or disallowed if the injury has taken place as a result of improper action by the officer in the performance of his duties or the injury cannot be substantiated by the attending physician.”

The evidence in this case does not support a finding that horseplay has been a significant factor relative to worker’s compensation claims. “Horseplay” is a generally regarded “improper action.” The need for this provision has not been established. The Union proposal is adopted.

Proof of Illness

The City seeks to add to the last paragraph the following:

“Once an employee has exhausted their sick leave accrual, they are under ‘sick leave monitoring’ and must provide a doctor’s excuse for missing work until such time as the Chief is satisfied.”

The City has referenced internal comparables in support of its Proposal. Section 21.9 now provides, in the first sentence:

“A medical certificate may be required as evidence of any employee’s illness or injury that prevented the employee’s attendance at work, before the period will be allowed.”

The above provision is basically the same as is applicable to all of the internal comparables. The City has pointed out that the Fire Fighters’ CBA provides that a medical certificate may be required “for every absence of two (2) working days or more.” The “working day” for a Fire Fighter is normally 24 hours, so the provision is only applicable when 48 hours of work is missed. The current Agreement provides: “Medical certification may be required whenever the employee’s illness or injury prevents the employee from reporting to work for in excess of (3) three consecutive days.” The evidence was insufficient to establish that sick leave has been a

problem which requires the proposed language. The Union proposal is adopted.

Hospitalization Insurance

The City Proposal is displayed:

“Section 23.1 Hospitalization Insurance

Section 23.1-A. Modify to read:

‘City agrees to provide benefit package inclusive of PPO #3 with a \$10.00 prescription co-pay for generic medication and a \$40.00 co-pay for brand-name medication. Employees shall contribute through payroll deduction, 15% of the premium costs for 2011, effective upon the implementation date, and 20% effective January 1, 2012. The Employer will maintain a Flexible Spending Account (FSA) to which employees may contribute on a pre-tax basis.’

Section 23.1-B. Modify to read:

‘City shall pay the premium for current active employees and dependents, subject to any required employee premium share. Retirees are eligible for City paid hospitalization coverage in accordance with the following schedule:

Employees retiring on or after July 1, 2011 will be required to contribute the same amount towards the premium as active employees. The percentage of earned retirement insurance premium contribution will apply to the City’s portion of the premium payment as follows:

Ten (10) years of service equals 40% premium contribution from the City + 4% per year of service up to 25 years. [The City’s maximum contribution after 25 years of service will be equal to the remainder of the premium cost after the required employee/retiree contribution.]

The City will provide retiree health insurance only for those individuals that receive a pension through the Municipal Employees Retirement System (MERS) immediately upon leaving the employment of the City of Muskegon Heights.’

Section 23.1-C. Add to the final paragraph:

'For employees who retire on or after July 1, 2011, the City will no longer provide any health insurance coverage for retirees' dependents or survivors once the retiree has reached the age of sixty-five (65). Such coverage may be purchased at the retiree's expense, if permitted by the carrier.'

Section 23.2 Dental/Optical Insurance. Modify to read:

Effective upon execution, the City will contribute up to \$30.00 per month, per employee, to pay the monthly premium for a Dental/Optical Plan selected by the Union."

The Union's Proposal is as follows:

"The Union's last best offer on Section 23.1-A is as follows.

- A. The Employer agrees to provide the Blue Cross/Blue Shield Community Blue PPO Plan 3 with a 250/500 deductible, \$30.00 co-pay for office visits and \$50.00 co-pay for emergency room visits, with the Blue Cross/Blue Shield Prescription Drug Coverage requiring a maximum co-payment of \$10.00 for generic and \$40.00 for name-brand medications. Employees shall contribute ten (10%) percent of the monthly premium cost, however said contribution shall not exceed \$100.00 per month, and the Employer shall pay the remaining monthly premium cost. The Employer will maintain a Flexible Spending Account (FSA) to which an employee may contribute on a pre-tax basis.

The Union's last best offer on Section 23.1-B is as follows.

- B. The City shall pay the premium for current employees and dependents, subject to any employee premium share specified in the subsection A above. Retirees are eligible for City-paid hospitalization and prescription drug coverage in accordance with the following schedule.

Employees who retired on or before July 1, 2011 are eligible for City-paid hospitalization and prescription drug coverage. Employees retiring after July 1, 2011 shall be entitled to health and prescription drug insurance coverage and shall contribute the same amount toward the monthly premium cost as active employees; however the retiree's

contribution toward the monthly premium cost shall not exceed one-hundred-fifty (150%) of the monthly premium cost required of employees at the date of his/her retirement. The Employer shall pay the remaining premium cost.

Section 23.1-C – The Union's last best offer on Section 23.1-C is that the status quo be maintained and therefore Section 23.1-C of the current collective bargaining agreement remain unchanged in its entirety as set forth in the current agreement. Therefore said Section 23.1-C is hereby incorporated herein and stated as the Union's last best offer on this issue.

Section 23.2 Dental/Optical Insurance

The Union's last best offer on Section 23.2 Dental/Optical insurance is that the status quo be maintained. Therefore Section 23.2 of the current collective bargaining agreement remain unchanged in its entirety as set forth in the current agreement and said Section 23.2 is hereby incorporated herein and stated as the Union's last best offer on this issue.”

The Parties are in agreement that a Blue Cross/Blue Shield PPO3 will replace the current Plan.

The Parties differ in regard to the amount of premium co-pay.

The City notes that its Proposal – 15% contribution for 2011 and 20% contribution for 2012 – means the Bargaining Unit employees will contribute approximately 7% for the entire year of 2011 and 20% for 2012. The Union responds that under the City Proposal Officers would suffer a 4.6% pay cut for the remaining months of 2011 and at least a 6.1% pay cut in 2012 – if premiums increase, the pay cut will be larger.

Under the Union Proposal – premium contribution capped at \$100, Patrol Officers would take a 1.1% pay cut in 2011 and a 2.7% reduction for 2012. The City emphasizes that the \$100 cap has immediate effect and it means the City will have to pay all future health care cost

increases. "Employees would start with an 8.9% effective rate contribution which would continue to decline over the next two years of the contract".

With regard to internal comparables, the Police Clerical Unit contributes \$55.00 monthly toward the Family Plan and the DPW contributes \$35.00 monthly. All of the other City units make no payment toward monthly premiums.

None of the external comparables require a co-pay on premiums as the City seeks in its Last Best Offer (LBO). In support of its LBO, the Employer has referenced proposed legislation relative to health insurance contributions by local government employees. If the proposed legislation is enacted, it might then become applicable. In the meantime, it is appropriate to give consideration to the internal and external comparables as well as the City ability to pay. The Patrol Officers will not receive a raise for the duration of this CBA so any premium contribution translates into a wage reduction. At the current premium rate, the subject employees will be paying 8.9% of the premium cost. The Union Proposal also represents a 2.7% reduction in pay as a result of the premium contribution of \$100 per month. The Union Proposal is adopted by the Panel.

Section 23.1B relates to retiree health insurance. The difference on this issue relates to employees who retire after July 1, 2011. Ms. Henderson explained the City position:

"... That is to change to ten years of service would equal the 40 percent premium contribution to health care and then after that it would be plus four percent per year of service up to 25, which basically means at 25 years of service you would get the 100 percent health care coverage. But right now what we have a problem with, at ten years someone comes here, retires and they get 100 percent health insurance from the city."

The internal comparables do not reflect the change which the City seeks with this

Bargaining Unit. The external comparables have differing ways of dealing with retiree health care. The differences involve: provide a Defined Contribution; an age requirement; Employer cost of coverage capped at the employee's retirement, etc.

In its Brief, the Union argues the retiree contribution should be capped:

“When the retiree leaves the employ of the City and retires his/her retirement income is fixed. The monthly retirement checks do not increase. However, monthly insurance premiums increase over the years and if no cap is placed on the retiree's share of the premium it could result in eating up the retiree's entire pension check. Active employees are able to obtain raises in compensation throughout their working years to help defray the cost of insurance premium increases.”

The City explains the rationale for its LBO:

“ ... The City has proposed that an employee must work at least ten years to receive any retiree health benefit. At that point, they would receive a graduated contribution from the City starting at 40% of the premium contribution that the City makes for officers in the unit. The employees can earn an additional 4% for every subsequent year of service up to the 25th year of service. This would equate to the City paying its full share of the premium it pays for active employees after 25 years, with the retiree only required to pay the same premium share as an active employee.

The City has further conditioned this to make the retiree health insurance available only to those who actually retire from the City and immediately receive their State pension benefit. This precludes an officer from leaving after ten years, potentially at the age of 35 or younger, and claiming a 40% contribution from the City and continued access to health insurance while engaging in other employment throughout their adult life.”

On this issue, the Panel concludes the Last Best Offer of the City has more merit and it is adopted.

Section 23.1C concerns health insurance coverage for the retiree's spouse and dependents

after the retiree reaches age 65. The City proposes to discontinue providing coverage for employees who retire after July 1, 2011. The Union seeks to maintain the *status quo* – the City pay \$131.71 per month for health insurance for the retiree’s spouse and dependents when the retiree reaches age 65. The external comparables support the City Last Best Offer. Given the City’s financial situation, the Panel adopts the City Proposal.

Section 23.2 deals with the Dental Optical Insurance. The City seeks to reduce its contribution from \$60.00 per month to \$30.00 per month. The Union wants to maintain the *status quo*. The Panel appreciates the need for the City to reduce expenditures. The Bargaining Unit consists of ten Patrol Officers. A reduction of \$30.00 results in a monthly savings of \$360 per employee to the City. The Panel recognizes that the savings which would result from the proposed change will not significantly improve the City’s financial condition, however, the City has demonstrated a need to reduce costs. The City proposal relative to payment of Health Insurance premiums has been rejected. Given the City’s dire financial situation, the Panel adopts the City Last Best Offer in regard to Dental Optical Insurance.

Section 36.1 – Part Time Officers

Employer Proposal:

“Modify the Section to read as follows:

‘The City shall be entitled to hire part-time police officers as permitted by this section. A part-time police officer is defined as a police officer who works a maximum of seventy-two (72) hours per pay period for the City.

Part-time employees shall supplement the work force and shall not be used to replace any current full-time officer for greater than sixty (60) days nor to deny any bargaining unit members their rights under the contractual Agreement.

Part-time employees may be used to replace full-time employees who are absent from work due to vacations, personal leave, bereavement leave, leave due to work related injuries, training, or any other approved leave of absence. Part-time employees may also be used.

Part-time employees may also be used to supplement full-time officers on scheduled road patrols, to cover open shifts, for overtime details or events (i.e. sporting events, social details, etc.) or in any other situation where the City determines that additional coverage is needed.

Part-time employees may be used while full-time officers are on lay-off. In that circumstance, the available assignments shall first be offered to the laid off, full-time officers at the part-time rate of pay. Any temporary replacement of a current full-time officer, as allowed in paragraph 2 above, shall be done first by the recall of a full-time officer from lay off, when the replacement is for seven or more days.”

Union Proposal:

Maintain the *status quo*.

The City explains the purpose of its Proposal is “flexibility to use part-time officers to supplement the workforce.” By way of example, it is noted:

“ ... under the current language, part-time officers cannot be used for overtime details or events such as sporting events, social details, parades, etc., unless all full-time officers have rejected the overtime detail or event. This means that the City pays at overtime rates of almost \$32 per hour for this work as opposed to the approximately \$10 per hour paid to part-time officers.”

The City explicitly denies any intent to remove full-time officers and replace them with part-time officers.

The Union stresses that the City Proposal has a profound effect on the integrity of the Bargaining Unit:

“The City’s proposed language completely destroys the protection of the bargaining unit when it states that part-time officers will not be used to replace any current full-time officer, whereas the current language states that part-time employees will not be used to replace any current full-time positions (which is 14).

By changing the restriction from current full-time positions to current employees and eliminating the specified fourteen (14) positions it allows the City to totally replace the existing bargaining unit with part-time employees. As each current employee retires or leaves the City could replace him/her with a part-time employee. In addition since the City’s proposed language removes the definition of current full-time positions of fourteen (14) full-time positions the workforce loses all definition and the City can take the position the part-time officers are supplementing the part-time workforce comprised of all part-time officers.

... The language, contained in the third paragraph of the City’s last best offer, allows the City the right to deny regular full-time officers overtime opportunities and replace them with part-time employees.

The final paragraph of the City’s last best offer would allow the total destruction of the bargaining unit. The last paragraph states that part-time employees may be used while officers are on lay off. The available assignment will be first offered to a full-time employee who is on lay off, however the full-time employee on lay off must accept the part-time rate of pay. The City testified that the part-time rate of pay would be \$10.50 per hour. The part-time employee receives no other contractual benefits and the City’s last best offer is silent on this issue.”

The Union characterizes the City Proposal as “an openly blatant attempt to bust the Union.”

Among the internal comparables, only the DPW has a provision relating to part-time workers. None of the external comparables have language in reference to part-time employees as broad as that sought by the City.

The Panel regards the City Proposal as one of overreach. It is recognized that greater flexibility in the use of part-time officers is probably a valid goal. The problem here is that the

City Proposal exceeds the bounds of reasonableness. The Panel believes the Parties should further discuss the use of part-time Officers with a view of enabling the City to reduce overtime costs while at the same time not endangering the integrity of the Bargaining Unit. The Panel adopts the Union Proposal with the proviso that the Parties should discuss the use of Part-Time Officers to reduce overtime costs.

Section 38.1 Muskegon Heights Promotional Procedure

The City proposes the following modification – in bold print:

- “10. With respect to all examinations, all candidates who meet the passing score as provided in this Section will be interviewed by the Oral Board. The Oral Board will rank the candidates and send forward the names of all candidates and their ranking to the Chief. The Chief will fill the vacancy from the list forwarded by the Oral Board **while also assessing the candidate’s performance evaluations, absenteeism and job performance merit.**”

The Union requests the *status quo*.

The City acknowledges that “the Chief probably retains discretion to apply whatever criteria he chooses in selecting the successful candidate off the eligibility list.” It nevertheless maintains: “..it is important for those on the list to understand the areas that the Chief will be reviewing to hopefully eliminate disputes, if not disappointment, once an appointment is made.”

It is the Union’s view the language change is unnecessary:

“The current process allows the Chief to select who he wants from the entire list for whatever reason he wants to select them.”

Although the Panel is not entirely satisfied the proposed change is necessary, it will grant the City Proposal on the basis it clearly places applicants on notice that the recited criteria are relevant in the selection process. The Panel adopts the City Proposal.

AWARD

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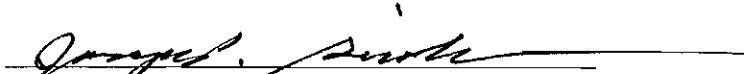
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JOHN PATRICK WHITE, CITY DELEGATE


MICHAEL F. WARD, UNION DELEGATE


JOSEPH P. GIROLAMO, CHAIRPERSON

Dated: August 25, 2011

CITY OF MUSKEGON HEIGHTS
AND
FRATERNAL ORDER OF POLICE, LABOR COUNCIL

ACT 312 PROCEEDING

MERC CASE # L-09 J-7002

City Delegate Dissent to Preliminary Award

My main concern is that the issue of ability to pay has basically been ignored in this proposed award with relatively minor exceptions which do little to address the City's deficit, its bleak revenue picture or its significant need to curtail its current costs going forward to eliminate its sizeable budget deficit. The award also dismisses as factors for consideration the legislative actions which have occurred (PA 312 amendments) and which are pending (SB 7 on health care contributions). These are clearly "such other factors" which would normally be taken into consideration in a voluntarily negotiated agreement. However, in this proposed award, they are basically wiped aside as if they are non-factors, ignoring the immediate affect language of the PA 312 amendments and dismissing the likely legislative imposition of insurance co-pays because it has not been passes as a mandate. It is this very type of award, which ignores the severity of the City's financial condition, which triggered the legislative amendment to Act 312.

I address the key concerns with the proposed award below. I will be requesting to submit a minority or dissenting opinion to the award if this is issued in its current format.

Ability to Pay.

This has always been one of the factors in PA 312. It only makes sense that if a municipality cannot afford to pay that an arbitrator should not order it to do so. However, because arbitrators have seemed to provide limited weight to this factor, and because municipalities are struggling financially in the current economic climate, the legislature passed PA 116, which took immediate effect on July 20, 2011 with the governor's signature. These amendments specifically require that the panel give financial ability to pay the most significance.

The intent of immediate effect was to provide prompt relief for troubled municipalities. There is absolutely no reason that the clear and unambiguous language of the statute should not be given immediate effect by this panel. Had the legislature intended the amendments to only apply to proceedings initiated after the effective date of the amendments, it could have easily have made that proviso in the Act. It did not, and for good reason. The legislature had no intent to leave financially troubled municipalities vulnerable to the very problem that it intended to cure, simply because an Act 312 petition was filed prior to the effective date of the amendments.

To unilaterally determine that these amendments do not apply to this award is akin to having legislation passed prohibiting euthanization of dogs in shelters, only to have the shelter decide it will only apply the ban to dogs taken in after the effective date of the legislation. Those already in the shelter perish under the old rules. This simply does not make sense. The amendment on ability to pay was remedial, and merely clarified what everyone who has ever bargained a labor agreement has always known, that the ability to pay is always the most significant factor in determining wages and benefits in any normal negotiation.

These amendments are not similar to the situations where the legislature enhances the penalty for a certain crime, where application is reserved for those committing new crimes, not for pending criminal prosecutions. PA 116 is a civil, not a criminal statute, and the intent is to provide relief to financially troubled cities. There is no legal basis for denying or delaying the immediate effect of the Act.

There is no doubt that Muskegon Heights is in dire financial circumstances. It has been in state mandated deficit reduction plan for 3 years and has twice failed to meet that plan.. It has no fund balance, but only pays its bills by borrowing from various funds. There is little to no possibility of increased revenue, in fact decreasing revenue is the only likely scenario in the near future, particularly in light of the stock market losses of last two weeks, which will only further cripple the economy and further devastate the housing values.

This is a City on the ropes. Its inability to pay has been amply demonstrated in the record by substantial, material and competent evidence. Its citizens voted for a deficit reduction bond in 2004, for which they will continue to pay increased taxes through 2004 to retire the bond. For the duration of the present contract, the citizens of Muskegon Heights have already contributed to try to cure the City's financial woes. It is simply not fair to ask them to contribute further through an increased tax burden to shelter the police for making sacrifices, when the evidence shows a significant loss of jobs in City, declining property values and significant increase in foreclosures. This is particularly true when even compared to the 2000 census numbers, the Muskegon Heights patrol officers are making over ___% of the median household income in the City they serve. This is the second highest of all the external comparables. The interest of the public is certainly not served by making it sacrifice more to ease the burden on the police officers, who are at least employed.

In short, ability to pay must be the most significant factor, both as a legal and a practical matter. This proposed award simply does not reflect that priority.

Compensation Plan.

When considering ability to pay and the City's need for immediate financial relief, and the 5% reduction in wages is the City requests is justified. All other units have switched to the PPO3 health insurance plan long ago, providing the City with much needed financial savings. The police unit is the only one which has refused to switch, resulting in approximately \$129,000 (and growing) of additional expenses over the last 2 2/3 years to maintain the police officers' zero contribution, zero deductible, first dollar health care coverage. This is money that had to be taken away from other City services to the detriment of the public and frankly helped result in other City employees losing their jobs.

The proposed 5% reduction, which is not proposed bounce back in 2012 or 2013, would now recoup only a about \$49,000 of the \$129,000 the City has incurred in additional health insurance costs. That equates to only 38% of the contribution and sacrifice that other City employees have made to the effort to reduce the City's deficit. We cannot get the insurance premiums back by retroactively changing the policy. The only avenue to effectively address the need for financial contribution from the police unit towards deficit reduction at this time is through wage reduction. Any concession in wages is obviously a burden on the officers. However, other units have taken 0% wage increase for over this entire time as well as sacrificing on their insurance coverage. Awarding the unit simply a 0% wage does not acknowledge the internal comparables' sacrifice, or the contribution to the City's current deficit caused by having to maintain the premium cost health insurance for the police officers over all this time.

Even with the 5% reduction the officers would be making 188% of the median income of the citizens it serves. The officers would still be fairly compensated compared to the community in which they work and which has to pay their compensation.

The proposed award further rejects the City's proposal to deal with its potential continued inability to pay going forward. The contracting out is only triggered by a failure to meet State mandated deficit reduction goals, and allows the unit to propose savings sufficient to meet the savings offered by contracting out police services. This is a reasonable attempt to keep adequate police coverage for the City at a cost it can afford, and directly relates to ability to pay.

Further, the interest of the public is clearly overriding in this circumstance. The only other effective way to reduce the cost of the police department is to lay off officers. Given the bare bones staffing due to prior layoffs, this would mean not providing 24/7 police coverage. Given the number and nature of calls in this community, that is a result that should be avoided at all costs. The danger to the public is simply unacceptable.

To offer up the rationale that an emergency financial manager can be appointed if the contract needs to be set aside in the future due to unsustainable costs is simply not an effective remedy to guard the public safety. Not only is this not a factor listed in either the old or new version of Act 312, telling the City, through an Act 312 proceeding, that it must give up democratic control of the City in order to control its costs and protect its citizens is beyond the scope of the Act 312 process.

Finally, there is no clarification that the Union proposal is reflecting the Sergeants' scale, not the police officers' scale. If the scale inserted in its proposal is accepted it would reflect a 2% increase in wages.

Health Insurance. Sec. 23.1.A.

Again, ability to pay is the primary issue with who bears the burden of the health care premiums. The union's proposal to cap the officers' contribution at \$100 per month simply leaves the City with all future health care expenses for the next 2 1/2 years. The City has already increased its deficit by maintaining the officers' health insurance over the last 2 1/2 years. Given the City's deficits and the legislative indication that employees should pay 20% of their health insurance costs, limiting this unit to pay 8.9% and declining over the next three years is simply not justifiable under the PA 312 factors. No responsible employer would spend money it does not have to maintain health insurance it cannot afford, while holding its employees harmless from the escalating costs over which it no longer has any control.

As previously discussed, all other units have already make concessions on the insurance plan, saving the City significant money compared to the police unit. Several unit are also already contributing toward the premium costs, and the others are still under or just coming off existing bargaining agreements. To base the police officers next 3 years off the agreements made with other units some 2-3 years ago, is again placing the police unit well behind where the other City employee already have been and will be going in the future in response to the continuing decline in the City's financial condition. There is no reason that the police unit should continue to receive favored treatment based its ability to implement Act 312 arbitration.

Part-time Employees. Sec. 36.1.

This is the other major opportunity for the City to create cost savings while still maintaining adequate police services to its citizens. Given the City's deficit, this is a reasonable and appropriate attempt to balance current officers employment with cost effect supplementation. It is not, as stated in the proposed award, either "overreaching" or "unreasonable", nor does it, as asserted by the union, a "blatant attempt to bust the Union." The parties contract has always provided for some use of part-time employees. This was even before the City experienced its current economic difficulties.

The proposal simply allows the City to use temporary, part-time employees to supplement the current officers, not to replace them. There is a limit to how long part-time officers could be used. Further, although the proposal allows use of part-time officers while full-time officers are on lay off, it also provides that such officers would be offered the first opportunity for the part-time work. The simple fact is that there may be a need for supplemental coverage, when the City has neither the need for or the funds to recall a full-time officer to a regular shift rotation. Absent a cost effective method to cover these policing needs, the City either has to leave events without police protection or shifts without police coverage. Continuing to cover with overtime is simply not an option when the City is in a continuing deficit with continually declining revenue.

The fact that no other comparable has a similar breadth of contract language on part-time employees is not surprising, given that none of the comparables is under the financial constraints that the Muskegon Heights is facing. Under this reasoning, no new language would ever be possible through and Act 312 proceeding, because by definition it is "new". Clearly this is not what Act 312 envisioned by making comparables one of the factors for determining contract language. The suggestion that the parties continue to discuss compromise is not in any manner realistic or appropriate, given the history in this matter that even getting to a reduction in health care plans with some contribution has required getting to this 312 proceeding. The chances of any compromise on the use of part-timers for the remainder of this contract is slim to none.

The real issue here is what is more reasonable, based on the City's financial condition and the public safety: no ability to use part-time employees, or the City's measured approach of specific purposes, limited time and first refusal to laid off employees. The simple fact is that no relief in this area is not reasonable.

Summary

The bottom line is that the award gives very little current financial relief to the City, which has proven in great detail its inability to pay even its current wages. The only current relief is a \$100 per month contribution toward insurance premiums capped for 2 1/2 more years, which will be about 11.1% behind where the legislature is expected to peg the contribution rate of 20% for all public sector employees (not just for those in municipalities with financial crises), when it reconvenes on August 28, 2011. This unit will have made less of a sacrifice than all other City employees have already made by previously switching to the PPO3 insurance plan, and less than they will have to contribute towards their premiums when their contracts are renegotiated. In total, the current financial contribution under the \$100 cap is \$900 per month, or \$10,800 for a full year. This is essentially saying that the City does not have a real financial crisis, or else that the police officers are immune from having to make an equal sacrifice to help the City reduce its deficit.

Neither in its individual issues or its overall impact does this proposed award comport with the evidence as submitted under either the current Act 312 elements.

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John Patrick White